

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JERRY JERMAINE HEFLIN,)	CASE NO. 1:22-CV-00863
)	
Petitioner,)	JUDGE CHARLES ESQUE FLEMING
)	
vs.)	MAGISTRATE JUDGE
)	CARMEN E. HENDERSON
WARDEN KENNETH BLACK,)	
)	OPINION AND ORDER ADOPTING
Respondent.)	MAGISTRATE’S REPORT AND
)	RECOMMENDATION (ECF NO. 21)

On June 7, 2023, Petitioner Jerry Jermaine Heflin (“Petitioner”) filed Motion for Leave Requesting Personal Recognizance Release; he is requesting release during the pendency of these proceedings to care for his mother and sister, both of whom are in poor health. (ECF No. 19, PageID# 789–91; ECF No. 19-3. Aff. of Cedella Heflin, PageID# 799–800; ECF No. 19-5, Aff. of Merrier Heflin, PageID# 801–02). Respondent Warden Kenneth Black (“Respondent”) opposed Petitioner’s release, noting that Petitioner’s Motion fails to allege the type of extraordinary circumstances that can properly support such a request. (ECF No. 20, PageID# 810–11).

On June 22, 2023, Magistrate Judge Carmen Henderson issued a Report and Recommendation, recommending the denial of the Petitioner’s Motion. (ECF No. 21). The Report and Recommendation explains that, in order to meet the standard for release pending review of a habeas petition, Petition had to show (1) exceptional circumstances for release; and (2) the existence of a “substantial claim of law based on the facts” for release. (*Id.* at PageID# 814

(quoting *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990)). Denial of Petitioner’s Motion is based on his failure to show the type of “extraordinary circumstances” that qualify for release; Petitioner did not allege that he is gravely ill, nor that his crime is minor and his sentence is short, nor that there has been an extraordinary delay in these proceedings. (ECF No. 21, PageID# 815 (quoting *Gideon v. Lima Mun. Ct.*, No. 3:21-CV-2087, 2021 WL 6031492, at *3 (N.D. Ohio Dec. 21, 2021))). Since Petitioner did not satisfy the standard for showing extraordinary circumstances, Magistrate Judge Henderson did not reach the issue of whether Petitioner alleged a substantial claim of law based on the facts. (*Id.* at PageID# 816).

Fed. R. Civ. P. 72(b)(2) provides that the parties may object to a Magistrate Judge’s Report and Recommendation within 14 days after service. Under the Federal Magistrates Act, a district court must conduct a *de novo* review of those portions of the Report and Recommendation to which the parties have objected. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). On June 22, 2023, a copy of the Report and Recommendation was mailed to Petitioner at the Richland Correctional Institution. On July 7, 2023, Petitioner filed a Motion for Leave Request Pursuant to “Motion of Rebuttal-Reply” Against the Opposition’s Reply. (ECF No. 22).

Construing the latter filing as an objection to the Report and Recommendation, the Court agrees with Magistrate Judge Henderson. As the Report and Recommendation explains, only a habeas petitioner’s own grave illness can properly support a motion for release. *Gideon*, 2021 WL 6031492, at *3 (citing *Blocksom v. Klee*, No. 11-cv-14859, 2015 WL 3000261, at *4 (E.D. Mich. Jan. 22, 2015)). Petitioner’s July 7 objection affirms that he is not gravely ill, and that his release is sought due to the illnesses of his mother and sister. (ECF No. 22, PageID# 822). This is not an exceptional circumstance that qualifies Petitioner for release.

Accordingly, the Court **ADOPTS** Magistrate Judge Henderson's Report and Recommendation, incorporates it fully herein by reference, and **DENIES** Petitioner's Motion for Leave Requesting Personal Recognizance Release (ECF No. 19).

IT IS SO ORDERED.

Date: August 21, 2023

A handwritten signature in black ink, reading "Charles Esque Fleming". The signature is written in a cursive, flowing style.

CHARLES ESQUE FLEMING
UNITED STATES DISTRICT JUDGE